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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 19____

No. 351

LOUISIANA PUBLIC SERVICE COMMISSION,
Appellant,

versus

UNITED STATES OF AMERICA and the INTERSTATE COMMERCE COMMISSION,
Appellees.

On Appeal from the United States District Court for the Eastern District of Louisiana.

JURISDICTIONAL STATEMENT.

FRED S. LeBLANC,
Attorney General, State of Louisiana;
JOEL B. DICKINSON,
Assistant Attorney General, State of Louisiana;
ROBERT A. AINSWORTH, JR.,
Attorney for Louisiana Public Service Commission, Appellant;
W. CROSBY PEGUES, JR.,
For the Department of Highways, State of Louisiana, Intervening Plaintiff;
PAUL G. BORRON, JR.,
For American Sugar Cane League of the U.S.A., Inc., Intervening Plaintiff;
LOUIS A. SCHWARTZ,
For New Orleans Traffic and Transportation Bureau and American Turpentine and Tar Company, Intervening Plaintiffs and American Sugar Cane League of the U.S.A., Inc., Intervening Plaintiff.

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On Appeal from the United States District Court for the Eastern District of Louisiana.

JURISDICTIONAL STATEMENT.

In compliance with the rules of the Supreme Court of the United States, plaintiff, Louisiana Public Service Commission, and intervening plaintiffs, Department of Highways, State of Louisiana; New Orleans Traffic and Transportation Bureau; American Turpentine and Tar Company; and American Sugar Cane League of the U. S. A., Inc., appellants, submit herewith their statement, particularly disclosing the basis upon which the Supreme Court of the United States has jurisdiction on appeal to review the final judgment of the District Court entered in this cause on July 12, 1954.

STATUTORY PROVISIONS SUSTAINING JURISDICTION.

The jurisdiction of the Supreme Court of the United States to review by direct appeal the judgment and decree complained of is conferred by 28 *U. S. Code Section* 1253 and 2101 (b), relating to direct appeals from decisions of three-judge courts in suits to set aside in whole or in part orders of the Interstate Commerce Commission.

Section 1253, *supra*, reads as follows:

"#1253. *Direct appeals from decisions of three-judge courts.*

Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges. June 25, 1948, c. 646, 62 Stat. 926."

Section 2101 (b), referred to above, reads as follows:

"#2101. *Supreme Court; time for appeal or certiorari docketing; stay.*

"(b) Any other direct appeal to the Supreme Court which is authorized by law, from a decision of a district court in any civil action, suit or proceeding, shall be taken within thirty days from the judgment, order or decree, appealed from, if interlocutory, and within sixty days if final."

Suit was brought in this case under the provisions of *Title 28 U. S. C. A., Sections 1336, 1398, 2284, 2321-25;*

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Title 49 U. S. C. A., Section 17 (9), and *Title* 5 *U. S. C. A., Sections* 1001-1009.

STATUTE INVOLVED.

The Statute involved is the *Interstate Commerce* Act, particularly *Sections* 13 (3) and (4) of *Part I* (49 *U. S. C. A. Section 13 (3) and (4))* which reads as follows:

"*Investigation involving State regulations; conference of State and interstate commissions.*

"(3) Whenever in any investigation under the provisions of this chapter, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, the commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this chapter or chapter 12 of this title with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the commission is empowered to

act and where the rate-making authority of a State is or may be affected by the action taken by the commission. The commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this chapter or chapter 12 of this title.

"Duty of Commission where State regulations result in discrimination.

"(4) Whenever in any such investigation the commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

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STATEMENT OF THE CASE.

Plaintiff, Louisiana Public Service Commission, an agency of the State of Louisiana, created by the *Louisiana Constitution of* 1921, *Article VI, Sections* 3-9 inclusive, has all necessary power and authority under said *Constitution* to govern, regulate and control common carrier railroads operating within the State of Louisiana, and to fix reasonable and just single and joint-line rates, fares, tolls and charges for the commodities furnished or services rendered. It brought this action on April 28, 1954 against defendants to enjoin, annul, and set aside the report of the Interstate Commerce Commission dated January 5, 1954 and the order of said Commission dated April 5, 1954, entered by said Commission in Docket No. 31,163, entitled, "*Louisiana Intrastate Freight Rates and Charges.*" By order dated December 4, 1952, the Interstate Commerce Commission, in Docket No. 31,163 aforesaid, entered upon an investigation for the purpose of determining whether the rates and charges of the common carriers by railroad operating in Louisiana, or any of them, for the intrastate transportation of property, made or imposed by authority of the State of Louisiana, cause any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce, and if so, what rates and charges, or what maximum or minimum, or maximum and minimum,

rates and charges shall be prescribed to remove any unlawfulness found to exist. Said petition was filed in accordance with the provisions of *Section* 13 (4) *of Part I of the Interstate Commerce Act.*

The investigation was directed to the difference between freight rates and charges on Louisiana intrastate commerce of certain so-called excepted commodities in carloads, and those established pursuant to authority for increases in freight rates and charges for transportation of property in interstate or foreign commerce granted by the Interstate Commerce Commission in *Increased Freight Rates,* 1948 (frequently referred to as *Ex Parte* 168), 272 *I.C.C.* 695, decided December 29, 1948, and 276 *I.C.C.* 9, decided August 2, 1949, and in *Increased Freight Rates,* 1951 (frequently referred to as *Ex Parte* 175), 280 *I.C.C.* 179, decided March 12, 1951, 281 *I.C.C.* 557, decided August 2, 1951, and 284 *I.C.C.* 589, decided April 11, 1952. In *Ex Parte* 168, increases were granted in interstate freight rates of a total of 8 per cent in southwestern territory, 10 per cent in southern territory, and 9 per cent between those territories, effective on September 1, 1949. In *Ex Parte* 175, increases of 15 per cent generally were authorized on interstate freight rates, effective August 28, 1951. For rate-making purposes, that portion of Louisiana lying east of the Mississippi River is embraced in southern territory, and the portion west of the River is included in southwestern territory.

Following the general freight increases authorized by the Interstate Commerce Commission in *Ex Parte* 168, plaintiff, Louisiana Commission, after due and complete hearing, granted similar increases on intrastate freight rates, exempting certain commodities. A petition was filed by the principal rail carriers in Louisiana under the provisions of *Section* 13 (4) *of Part I of the Interstate Commerce Act* seeking to remove the exemptions in the Louisiana Commission's order; and on February 15, 1952 the Interstate Commerce Commission, in *Louisiana Intrastate Rates and Charges*, 284 *I.C.C.* 467, upheld the Louisiana Commission in part and reversed it in part.

The specific commodities on which the Louisiana Public Service Commission was upheld in the Interstate Commerce Commission proceedings aforesaid are as follows:

Brick, common building or face, and hollow building tile in Louisiana east of the Mississippi River; cattlefeed, consisting of not less than 65% of cottonseed meal and cottonseed hulls or soybean meal, in carloads; cottonseed and cottonseed cake, meal, and hulls in Louisiana east of the Mississippi River; soybeans and soybean cake or meal, in carloads in Louisiana east of the Mississippi River; sand, gravel and related commodities, including asphalt-coated rock and gravel; sugar, raw and refined, and sugarcane.

Following the general freight increases authorized by the Interstate Commerce Commission in *Ex Parte* 175

aforesaid, plaintiff, Louisiana Commission on petition of the principal rail carriers in Louisiana, and after due and complete hearing held before it, granted similar increases in Louisiana intrastate freight rates. However, it exempted certain commodities from said general increase for reasons stated in its orders.

Hearing on the investigation of the Interstate Commerce Commission in Docket No. 31,163 was duly held before Examiner George B. Vandiver at Baton Rouge, Louisiana on February 24, 27, 1953. The Examiner heard the evidence, oral and written, presented by all interested parties, including plaintiff, the rail carriers, and numerous interested shippers whose commodity rates were at issue in said proceedings.

During the hearing, objection was made by plaintiff and other interested parties to the Examiner to consideration of the exempted or excepted commodities of the *Ex Parte* 168 increases heretofore authorized by the Interstate Commerce Commission, on the ground that said Interstate Commerce Commission had already acted upon the matter and had substantially upheld the Louisiana Commission in *Louisiana Intrastate Rates and Charges*, Docket No. 30,783, 284 I.C.C. 457, decided February 15, 1952, less than 10 months prior to the order of the Interstate Commerce Commission of December 4, 1952 entering upon this investigation. The objection was overruled.

On or about July 31, 1953, the report proposed by Examiner Vandiver was duly served on all parties, including plaintiff. The Examiner recommended that the Interstate Commerce Commission find that present Louisiana intrastate rates and charges on the so-called exempted or excepted commodities (except cattlefeed and fertilizer) are abnormally low and traffic thereunder fails to produce its fair share of the earnings required to yield revenue sufficient to enable the rail carriers to provide adequate and efficient rail service, and that said rates cause an undue burden upon interstate commerce and in the future will cause undue, unjust and unreasonable discrimination against interstate commerce.

The Examiner further held that establishing of increases in intrastate rates and charges which he recommended be prescribed will increase the rail carriers' revenues in Louisiana by more than $1,900,000 annually.

Exceptions to the Examiner's report were duly filed within the time prescribed by the rules of the Interstate Commerce Commission by plaintiff and other interested parties. Oral argument was presented and thereafter, on January 5, 1954, the Interstate Commerce Commission issued its report approving the findings of its Trial Examiner *in toto* and adopting the Examiner's proposed report in almost the identical language used by the Examiner. However, Commissioner Freas dissented from the entire report; Commissioner Clark dissented in part,

particularly to the extent that he could not agree that increased rates should be prescribed on sugar and sugarcane, and was joined in this dissent by Commissioners Alldredge and Knudson.

Thereafter, and within the time prescribed by the rules of the Commission, plaintiff and other interested parties filed petitions for rehearing and further hearing, reconsideration, reargument and further oral argument and modification of its findings.

On April 5, 1954, the Interstate Commerce Commission denied said petition for reconsideration, etc. and issued its order requiring plaintiff to cease and desist on May 17, 1954 and thereafter to abstain from practicing the unjust discrimination against interstate commerce and the undue preference and advantages to persons and localities in intrastate commerce, and undue prejudice and disadvantage to persons and localities in interstate commerce found to exist in the Interstate Commerce Commission report of January 5, 1954.

The effect of the Interstate Commerce Commission's report of January 5, 1954 and its order of April 5, 1954, is to cause substantial increases in Louisiana intrastate freight rates on many vital and important commodities, contrary to the express findings of plaintiff Louisiana Commission, as will more fully appear from the list of commodities involved and percentage rate increases shown on Appendix A to the Interstate Commerce Commission report of January 5, 1954.

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As will appear by reference to said Appendix A, the percentage increases prescribed under said report and order on the commodities involved are as follows:

Asphalt	15%
Asphalt-coated rock, sand and gravel	8% plus 15%
Bagasse	15%
Brick, common building or face, hollow building tile (plus 8% if moving east of the Mississippi River)	15%
Cement	15%
Clay and shale cinders	9%
Cottonseed, cottonseed cake, meal and hulls (plus 8% if moving east of the Mississippi River)	15%
Cottonseed bran	8% plus 15%
Molasses	9%
Petroleum products	9%
Sand, gravel and related commodities	8% plus 12%
Soybeans, soybean cake and meal (plus 8% if moving east of the Mississippi River)	15%
Sugar, raw and refined, and sugarcane	8% plus 15%
Sulphur and sulphuric acid	9%
Tarwood or waste wood	15%

Trial on this cause on the record made before the Interstate Commerce Commission (which was offered in evidence at the hearing hereof) was held before the three-judge federal court on June 5, 1954, and after oral argument the matter was submitted and taken under advisement. On July 12, 1954 the Court rendered its opinion, dismissing plaintiff's complaint. Said opinion is unreported; accordingly it is reproduced herein in the appendix.

As stated in the Notice of Appeal, the following questions are presented by this appeal:

1. The District Court did not correctly apply this Court's holdings in *Universal Camera Corp. v. National Labor Relations Board*, 340 U. S. 474, 71 S. Ct. 456, which required the Court below to determine the substantiality of evidence from the whole record, thereby imposing a responsibility on the Court to exercise fully rather than abdicate the function of judicial review of an action of an administrative tribunal such as the Interstate Commerce Commission decision here involved by a consideration of all of the facts and circumstances of record.
2. The District Court's opinion should have held that the Interstate Commerce Commission's findings and subsequent orders (the subject of the instant complaint) were arbitrary, capricious, unreasonable and unsupported by substantial evidence and should be declared null and void. This is apparent from the failure of the District Court to analyze or review the evidence in its opinion, and by its statement that the function of weighing the evidence is "a function which peculiarly addressed itself to the expertise of

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the Commission." For the conclusion seems inescapable that the lower Court failed to consider the record as a whole in determining the substantiality or sufficiency of evidence to justify the Commission decision.

3. The District Court should have reversed the Interstate Commerce Commission decision because under similar and almost identical facts the Commission had denied the petition of the railroads which sought *Ex Parte* 168 increases on the accepted commodities, less than 10 months prior to entering its order of investigation which forms the subject of the present case. (*Louisiana Intrastate Rates and Charges, 284 I. C. C. 467*, decided February 15, 1952).

4. The District Court should have reversed the Interstate Commerce Commission decision wherein it held that present Louisiana Intrastate Rates on the excepted commodities are abnormally low, fail to produce their fair share revenue and cast a burden upon and unjustly discriminate against interstate commerce, because a review of the whole record will not substantiate such findings and because the mere existence of a disparity between interstate and intrastate rates on the excepted commodities does not show discrimination in and of itself.

5. The District Court should have held from a review of the whole record that there was no substantial evidence before the Interstate Commerce Commission proving that the rail carriers in Louisiana are failing to earn a proper return from their intrastate operations in said State; nor was there such a showing that

the revenues derived from Louisiana intrastate operations do not bear their fair share of the revenue required to enable the rail carriers to render adequate and efficient rail service. No attempt was made to prove the amount of revenue needed by the rail carriers to maintain efficient operations and an adequate transportation system.

6. The District Court should have reversed the Interstate Commerce Commission decision which held that the increase prescribed in this case in the Louisiana intrastate rates on the excepted commodities will result in substantial increases in revenue to the rail carriers. On the contrary, the record shows the opposite, namely that the rail carriers would suffer a loss in revenue because there will be a substantial diversion of traffic to competing modes of transportation, namely motor carrier and water. Diversion to motor carriers will increase the use of the state highways and add to the traffic hazards of persons traversing said highways.

7. The District Court should have reversed the Interstate Commerce Commission decision on a consideration of the whole record, for the evidence showed that the excepted commodities could not bear any additional burden or increase in cost of transportation, and that there will be a substantial diversion of traffic from the rail carriers.

8. The District Court should have given notice to all of the erroneous findings of the Interstate Commerce Commission complained of by petitioners in its complaint and herein set forth. It should have required a

high standard of certainty and the right of the Interstate Commerce Commission to interfere with the intrastate jurisdiction of a state agency, the Louisiana Public Service Commission, should have clearly appeared. Thus the lower Court failed to give effect to this Court's findings in *King v. U. S.*, *344 U. S.* 254, and *North Carolina v. U. S.*, 325 U. S. 507. The overwhelming preponderance of evidence taken before the Interstate Commerce Commission conclusively shows that the rail carriers will sustain a loss in revenues by virtue of the higher rate scale on the excepted commodities and there will be a diversion of traffic to other modes of transportation. The record does not show a justification for the interference with and usurpation of the jurisdiction of the Louisiana Public Service Commission to regulate and determine Louisiana intrastate freight rates.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL.

The questions presented by this appeal are substantial. According to the Interstate Commerce Commission trial examiner, an increase in Louisiana intrastate rates on the excepted commodities of $1,900,000 per annum will result. The Commission found in affirming its trial examiner's report that the increase would amount to $1,700,000 per annum. Further, the case involves the fundamental question of the right of the Interstate Commerce Commission to take over the jurisdiction to fix freight rates on Louisiana intrastate traffic, which right belongs to the Louisiana Public Service Commission, the

proper state constitutional authority, unless that right has been unlawfully exercised to the prejudice of interstate traffic, as provided for by Section 13 (4), Part I of the *Interstate Commerce Act.*

Jurisdiction of this court to consider the present appeal is conferred as a matter of right under the statutes heretofore cited. There are nevertheless strong and important substantial issues involved and presented in this case.

The failure of the court to apply correctly the principle of law handed down by this court in *Universal Camera Corporation v. National Labor Relations Board*, 340 U. S. 474, 71 S. Ct. 456, is involved. The District Court in following that principle of law would not have abdicated the judicial function in reviewing the decision of an administrative tribunal such as the Interstate Commerce Commission, for it has been held by this court that a review of the record as a whole must be made herein.

Universal Camera Corp., supra, is a modification of the right of judicial review of administrative decisions. It cannot be read in any other light.

The test under the Administrative Procedure Act (5 U. S. C. A., Section 1009) is that the Court must review the *whole record* and not view it in isolation or one-sidedly in order to ascertain if there is substantial evidence to support the conclusion of the Board or Commission.

The Court said further (p. 464):

"From the legislative story we have summarized, two concrete conclusions do emerge. One is the identity of aim of the Administrative Procedure Act and the Taft-Hartley Act regarding the proof with which the Labor Board must support a decision. The other is that now Congress has left no room for doubt as to the kind of scrutiny which a court of appeals must give the record before the Board to satisfy itself that the Board's order rests on adequate proof."

* * * * * * * *

"Whether or not it was ever permissible for courts to determine the substantiality of evidence supporting a Labor Board decision merely on the basis of evidence which in and of itself justified it, without taking into account contradictory evidence or evidence from which conflicting inferences could be drawn, the new legislation definitely precludes such a theory of review and bars its practice. The substantiality of evidence must take into account whatever in the record fairly detracts from its weight. This is clearly the significance of the requirement in both statutes that courts consider the whole record. Committee reports and the adoption in the Administrative Procedure Act of the minority views of the Attorney General's Committee demonstrates that to enjoin such a duty on the reviewing

court was one of the important purposes of the movement which eventuated in that enactment." Reading again from the cited case, the Court said, (p. 465): "*Congress has merely made it clear that a reviewing court is not barred from setting aside a Board decision when it cannot conscientiously find that the evidence supporting that decision is substantial, when viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to the Board's view.*" (Emphasis ours).

"A formula for judicial review of administrative action may afford grounds for certitude but cannot assure certainty of application. Some scope for judicial discretion in applying the formula can be avoided only by falsifying the actual process of judging or by using the formula as an instrument of futile casuistry."

* * * * * * * *

"Since the precise way in which courts interfere with agency findings cannot be imprisoned within any form of words, new formulas attempting to rephrase the old are not likely to be more helpful than the old. There are no talismanic words that can avoid the process of judgment. The difficulty is that we cannot escape, in relation to this problem, the use of undefined defining terms."

* * * * * * * *

"But a standard leaving an unavoidable margin for individual judgment does not leave the judicial judgment at large even though the phrasing of the standard does not wholly fence it in. The legislative history of these Acts demonstrates a purpose to impose on courts a responsibility which has not always been recognized." (Emphasis ours).

On page 466 of the Reporter, the Court concludes with the following important language:

"We conclude, therefore, that the Administrative Procedure Act and the Taft-Hartley Act direct that courts must now assume more responsibility for the reasonableness and fairness of Labor Board decisions than some courts have shown in the past. Reviewing courts must be influenced by a feeling that they are not to abdicate the conventional judicial function. Congress has imposed on them responsibility for assuring that the Board keeps within reasonable grounds. That responsibility is not less real because it is limited to enforcing the requirement that evidence appear substantial when viewed, on the record as a whole, by courts invested with the authority and enjoying the prestige of the Courts of Appeals. The Board's findings are entitled to respect; but they must nonetheless be set aside when the record before a Court of Appeals clearly precludes the Board's decision from being justified by a fair estimate of the worth of the testimony of witnesses or its informed judgment on matters within its special competence or both." (Emphasis ours).

The District Court likewise misapplied this court's findings in *King v. United States*, 344 U. S. 254, and failed to give effect to *North Carolina v. United States*, 325 U.S. 507, 65 S. Ct. 1260.

The substantial nature of the issue involved is likewise apparent from the fact that by virtue of the Interstate Commerce Commission decision and order complained of the Louisiana Public Service Commission is now deprived of its constitutional jurisdiction to regulate Louisiana intrastate rates on the involved commodities. A chaotic condition only can result where the shippers of Louisiana must now apply to the Interstate Commerce Commission at Washington when relief of any kind is sought relative to the excepted commodities.

It is not enough for the District Court below to say that the function of weighing the evidence is "a function which peculiarly addressed itself to the expertise of the Commission." By so stating and by its decision herein we can only conclude that the court failed to consider the record as a whole in determining whether the evidence was sufficiently substantial to justify the Commission's decision.

For the foregoing reasons it is submitted that this court should note jurisdiction *and set this matter down for oral argument with briefs on the merits*, for plaintiff and intervening plaintiffs have a direct right of appeal under the statute and the questions presented are substantial.

The judgment of the lower court should be reversed and judgment entered for plaintiff and intervening plaintiffs as prayed for.

Respectfully submitted,

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For New Orleans Traffic and Transportation Bureau and American Turpentine and Tar Company, Intervening Plaintiffs and American Sugar Cane League of the U.S.A., Inc., Intervening Plaintiff.

By:.....
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Attorney.

CERTIFICATE OF SERVICE.

I hereby certify that a copy hereof has been duly served on all parties of record in the manner and form required by the rules of this court.

ROBERT A. AINSWORTH, JR.

THE OPINION AND DECREE OF THE COURT BELOW.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

LOUISIANA PUBLIC SERVICE COMMISSION
– Plaintiff

Vs.

UNITED STATES OF AMERICA, and the INTERSTATE COMMERCE COMMISSION,
– Defendants

U. S. District Court
Eastern District
of Louisiana

FILED JUL 14 1954

Dep. Clerk

CIVIL ACTION
No. 1355

CHRISTENBERRY, J.

This is an action brought by the Lousiana Public Service Commission against the United States of America, and the Interstate Commerce Commission, under Sections 1336, 2284 and 2321-2325, Title 28, U.S.C.A., to annul, set aside and permanently enjoin enforcement of an order of the Interstate Commerce Commission, hereinafter referred to as the "Commission". The order in question was entered by the Commission on April 5, 1954, and was bottomed upon a report of January 5, 1954, in proceeding *No. 31,163*, entitled *Louisiana Intrastate Freight Rates and Charges*, under which the respondent rail carriers operating in Louisiana were required to establish intrastate freight rates and charges in Louisiana no lower than the rates and charges prescribed and provided for in said report.

The American Sugar Cane League of the United States of America, Inc., New Orleans Traffic and Transportation Bureau, the Department of Highways of the State of Louisiana, and the American Turpentine and Tar Company intervened as parties plaintiff. All Class 1 railroads operating in Louisiana intervened as parties defendant. Answers were filed by the United States, by the Commission, and by the intervening railroads. Issue having been joined, the cause came on for hearing on motion of plaintiffs for a preliminary injunction and on the merits.

The jurisdiction of this Court is admitted.

The facts which give rise to the present controversy are these:

On October 20, 1952, twenty railroads operating in Louisiana instituted proceedings before the Commission, seeking an order, after investigation, authorizing an increase of intrastate freight rates in Louisiana, to the same extent and in the same manner as authorized by the Commission with respect to interstate rates and charges, in *Ex Parte No. 168, Increased Freight Rates, 1948*, 276 I.C.C. 9, and *Ex Parte No. 175, Increased Freight Rates, 1951*, 284 I.C.C. 589. Previously thereto, general increase of freight rates had been authorized by the Commission in *Ex Parte No. 162* and in *Ex Parte No. 166*. Prior to instituting proceedings before the Commission, the railroads had filed petitions with the Louisiana Commission, seeking approval of the increased rates. The Louisiana Commission allowed the increases sought, except on certain commodities, which commodities hereinafter will be referred to as "exempted commodities."

On December 4, 1952, in response to the petition filed by the railroads, Division 1 of the Commission ordered an investigation under Section 13 of the Interstate Commerce Act, 49 U.S.C.A., 13, of the lawfulness of the carload Louisiana intrastate rates on the exempted commodities, and on February 24, through February 27, 1953, hearings were held before an Examiner of the Commission. After the hearing a report of the Examiner was filed and served. The proposed report found that the intrastate rates imposed by the Louisiana Commission on the exempted commodities, listed in Appendix A to the proposed report, except cottonseed meal, cottonseed hulls, and soya bean meal and fertilizer were abnormally low; that traffic thereunder fails to produce its fair share of revenue to enable the railroad respondents to provide adequate and efficient service, and that such rates cause undue, unreasonable and unjust discrimination against interstate commerce. Exceptions to the proposed report were filed, and oral argument was had before the Commission.

On January 5, 1954, the Commission issued its report, *291 I.C.C. 279*. Ultimate findings and conclusions of the Commission are set forth in the report, and are virtually the same as those proposed by the Examiner. The report provided that an order would be issued, making the findings effective unless notified by the Louisiana Commission within 30 days after service that it would promptly authorize the approved increases. This time was subsequently extended to March 1, 1954. Plaintiff and others thereupon filed petitions with the Commission for reconsideration, modification of the report, and further hearing, which were denied by the Commission order of

April 5, 1954, under the terms of which the respondent railroads were ordered to establish the intrastate rates prescribed for the commodities named in the report, on May 17, 1954, effective upon five days' notice.

The issue to be determined here relates to the validity of the order of the Commission requiring the rail carriers to increase their Louisiana intrastate rates and charges as prescribed in the report of January 5, 1954.

Section 13(4) of the Interstate Commerce Act (49 U.S.C.A. § 13(4), prohibits, with respect to intrastate and interstate rail rates, preference and prejudice with respect to persons and localities, and discrimination against interstate commerce. In its report of January 5, 1954, the Commission found that the intrastate rates in question constituted discrimination against interstate commerce, and that intrastate carload rates on sand, gravel and sugar constitute undue and unreasonable advantage and preference to intrastate shippers, and subject interstate shippers of the same commodities to undue and unreasonable prejudice and disadvantage.

The complaint alleges illegality of the final report and order of the Commission on the grounds that they were not justified as against Louisiana intrastate rates, in that the Commission was acting beyond the scope of statutory authority; that the findings were unsupported by substantial evidence or contrary to evidence; and that such action was arbitrary.

At the outset, it is proper to consider the scope of this Court's authority to review the orders of the Commis-

sion. We take it to be settled law that an order of the Commission is entitled to finality, and may not be set aside, modified or disturbed on judicial review, if such order of the Commission lies within the scope of the Interstate Commerce Statute, and is based upon adequate findings that are supported by substantial evidence.

In the case of *Interstate Commerce Commission v. Union Pacific R. Co.*, 222 U.S. 541, 32 S. Ct. 108, in discussing the limitation upon the right of courts to review orders of the Commission, the Court said:

> "In determining these mixed questions of law and fact, the court confines itself to the ultimate question as to whether the Commission acted within its power. It will not consider the expediency or wisdom of the order, or whether, on like testimony, it would have made a similar ruling. 'The findings of the Commission are made by law prima facie true, and this court has ascribed to them the strength due to the judgments of a tribunal appointed by law and informed by experience.' Ill. Cent. v. I.C.C., 206 U.S. 441. Its conclusion, of course, is subject to review, but when supported by evidence is accepted as final; not that its decision, involving as it does so many and such vast public interests, can be supported by a mere scintilla of proof—but the courts will not examine the facts further than to determine whether there was substantial evidence to sustain the order."

In *Mississippi Valley Barge Co. v. U.S., et al*, 292 U.S. 282, 54 S. Ct. 692, 695, the Court said:

> "The structure of a rate schedule calls in peculiar measure for the use of that enlightened judgment which the Commission by training and experience is qualified to form. Fla. v. U.S., 292 U.S. 1, 54 S. Ct. 603. It is not the province of a Court to absorb this function to itself. (Cases cited). The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body."

Sections 13(3) and (4) of the Interstate Commerce Act provide for complaints of rail carriers to the Commission if intrastate rates result in preference for those rates and prejudice and discrimination against interstate commerce, and against persons and localities engaged in that commerce. The Statute authorizes the Commission to hear, consider and decide such complaints, and where found by it to be necessary to prescribe such rates and make such classifications and regulations as will remove and end such preference, prejudice and discrimination. There can be no question but that the Commission had the statutory authority to make the order here complained of. This being so, the only issue remaining for decision is whether the Commission's order has a rational basis in adequate findings, which in turn are supported by substantial evidence.

We think it plain that the findings made by the Commission in support of its conclusion are entirely adequate. The findings in the instant case are very similar to those made by the Commission in *King v. U.S.*, 344 U.S. 254. In that case the Florida Railroad and Public Utilities Commission, and others, sought to set aside and annul an order of the Commission requiring Florida railroads to

establish intrastate freight rates reflecting increases authorized by the Commission for comparable interstate traffic. In contending that the findings made by the Commission in the instant case are inadequate, the plaintiffs rely in large measure upon the case of *North Carolina v. U.S.*, 325 U.S. 507, 65 S. Ct. 1260. In that case, the Court held that mere disparity between rates for comparable intrastate and interstate service was not sufficient per se to establish the requisite unjust discrimination. Because the Court found that the Commission had failed to make any findings that the intrastate rate did not contribute its fair share of earnings to enable the railroads to operate profitably and efficiently, it set aside the Commission's order. However, in *King v. U.S.*, supra, the Court found that the Commission had made the findings which the Court held to be requisite but absent in the *North Carolina Case*. The findings which the Court found adequate in the *King Case* were made by the Commission in the instant case, so that the holding in the *North Carolina Case* is not applicable here.

This brings us to the question of whether the Commission's findings are supported by substantial evidence. In making such determination, the record must be considered as a whole. *Universal Camera Corp. v. National Labor Relations Board*, 340 U.S. 474, 71 S. Ct. 456.

We have considered the entire record, which comprises nearly one thousand pages of testimony and a great number of exhibits. In the belief that no useful purpose would be served by our reviewing the record here we shall not do so. It is sufficient to say that the Commission had before it a large volume of substantial evidence adduced

by both sides of the controversy. In reaching its conclusions it was necessary for the Commission to weigh the evidence. That was a function which peculiarly addressed itself to the expertise of the Commission.

We hold that the order complained of has a rational basis in adequate findings, which are supported by substantial evidence.

The complaint is, accordingly, dismissed at plaintiffs' cost.

New Orleans, Louisiana, July 9th, 1954.

United States Circuit Judge.

United States District Judge.

United States District Judge.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

LOUISIANA PUBLIC SERVICE COMMISSION
versus
UNITED STATES OF AMERICA, ET AL

U. S. District Court
Eastern District of Louisiana
FILED JUL 14 1954
Dep. Clerk

No. 1355 C.A.
B.R.D.

DECREE

This matter came on for hearing on June 5, 1954, on application for preliminary injunction and on the merits and after hearing evidence and argument of counsel the matter was submitted and the Court took time to consider.

Now, therefore, after due consideration and for the written reasons of the Court on file herein and in accordance therewith;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendant and intervening defendants, dismissing the suit of plaintiffs and intervening plaintiffs at their costs.

New Orleans, Louisiana, July 12th, 1954.

United States Circuit Judge

United States District Judge

United States District Judge.

LE COPY

Office - Supreme Court, U. S.
SEP 22 1954
HAROLD B. WILLEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 19 54

No. 351

LOUISIANA PUBLIC SERVICE COMMISSION,
Appellant,

versus

UNITED STATES OF AMERICA and the
INTERSTATE COMMERCE COMMISSION,
Appellees.

On Appeal from the United States District Court for the Eastern District of Louisiana.

AMENDMENT TO JURISDICTIONAL STATEMENT.

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JOEL B. DICKINSON,
Assistant Attorney General,
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ROBERT A. AINSWORTH, JR.,
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PAUL G. BORRON, JR.,
For American Sugar Cane League of the U.S.A., Inc., Intervening Plaintiff;
LOUIS A. SCHWARTZ,
For New Orleans Traffic and Transportation Bureau and American Turpentine and Tar Company, Intervening Plaintiffs and American Sugar Cane League of the U.S.A., Inc., Intervening Plaintiff.

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IN THE

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INTERSTATE COMMERCE COMMISSION,
Appellees.

On Appeal from the United States District Court for the Eastern District of Louisiana.

AMENDMENT TO JURISDICTIONAL STATEMENT.

Appellant has filed its jurisdictional statement in this matter but desires to amend and add to same as follows:

OPINION BELOW.

The opinion below is set forth in full in the appendix to the jurisdictional statement heretofore filed. It is an unreported opinion of the United States District Court for the Eastern District of Louisiana, having been rendered by a three-judge statutory court on July 12, 1954. The Interstate Commerce Commission decision will be found as an original exhibit in the transcript of appeal.

The Notice of Appeal in this case was filed on August 11, 1954 with the Clerk, United States District Court for the Eastern District of Louisiana, as will appear from the transcript of appeal on file with this court.

QUESTIONS PRESENTED BY THIS APPEAL.

The questions presented by this appeal begin on page 12 of the jurisdictional statement. Through inadvertence, one of the points which appellant desires to present in this appeal was omitted, although contained in the Notice of Appeal.

Appellant, therefore, restates herewith all of the questions, including the one inadvertently omitted. They should be considered in proper order immediately after the heading referring to jurisdiction, entitled "Statutory Provisions Sustaining Jurisdiction". Said questions are as follows:

1. The District Court did not correctly apply this Court's holdings in *Universal Camera Corp. v. National Labor Relations Board*, 340 U. S. 474, 71 S. Ct. 456, which required the Court below to determine the substantiality of evidence from the whole record, thereby imposing a responsibility on the Court to exercise fully rather than abdicate the function of judicial review of an action of an administrative tribunal, such as the Interstate Commerce Commission decision here involved, by a consideration of all of the facts and circumstances of record.

2. The District Court's opinion should have held that the Interstate Commerce Commission's report and subsequent orders (the subject of the instant complaint) were arbitrary, capricious, unreasonable and unsupported by substantial evidence and should be declared null and void. This is apparent from the

failure of the District Court to analyze or review the evidence in its opinion, and by its statement that the function of weighing the evidence is "a function which peculiarly addresses itself to the expertise of the Commission." For the conclusion seems inescapable that the lower Court failed to consider the record as a whole in determining the substantiality or sufficiency of evidence to justify the Commission decision.

3. The District Court should have reversed the Interstate Commerce Commission report and order because under similar and almost identical facts the Commission had denied the petition of the railroads which sought *Ex Parte* 168 increases on the excepted commodities, less than 10 months prior to entering its order of investigation which forms the subject of the present case. (*Louisiana Intrastate Rates and Charges, 284 I. C. C. 467*, decided February 15, 1952).

4. The District Court should have reversed the Interstate Commerce Commission report wherein it held that present Louisiana Intrastate rates on the excepted commodities are abnormally low, fail to produce their fair share of revenue and cast a burden upon and unjustly discriminate against interstate commerce, because a review of the whole record will not substantiate such findings and because the mere existence of a disparity between interstate and intrastate rates on the excepted commodities does not show discrimination in and of itself.

5. The District Court should have held from a review of the whole record that there was no substantial evi-

dence before the Interstate Commerce Commission proving that the rail carriers in Louisiana are failing to earn a proper return from their intrastate operations in said State; nor was there such a showing that the revenues derived from Louisiana intrastate operations do not bear their fair share of the revenue required to enable the rail carriers to render adequate and efficient rail service.

6. The District Court should have reversed the Interstate Commerce Commission's report and order wherein it held that the Louisiana intrastate carload commodity rates on sand and gravel and on sugar give undue and unreasonable advantage and preference to intrastate shippers and subject interstate shippers of the same commodities to undue and unreasonable prejudice and disadvantage.

7. The District Court should have reversed the Interstate Commerce Commission report and order which held that the increase prescribed in this case in the Louisiana intrastate rates on the excepted commodities will result in substantial increases in revenue to the rail carriers. On the contrary, the record shows the opposite, namely that the rail carriers would suffer a loss in revenue because there will be a substantial diversion of traffic to competing modes of transportation, namely motor carrier and water. Diversion to motor carriers will increase the use of the state highways and add to the traffic hazards of persons traversing said highways.

8. The District Court should have reversed the Interstate Commerce Commission report and order on a

consideration of the whole record, for the evidence showed that the excepted commodities could not bear any additional burden or increase in cost of transportation, and that there will be a substantial diversion of traffic from the rail carriers.

9. The District Court should have given notice to all of the erroneous findings of the Interstate Commerce Commission complained of by petitioners in its complaint and herein set forth. It should have required a high standard of certainty and the right of the Interstate Commerce Commission to interfere with the intrastate jurisdiction of a state agency, the Louisiana Public Service Commission, should have clearly appeared. Thus the lower Court failed to give effect to this Court's findings in *King v. U. S.*, 344 U. S. 254, and *North Carolina v. U. S.*, 325 U. S. 507. The overwhelming preponderance of evidence taken before the Interstate Commerce Commission conclusively shows that the rail carriers will sustain a loss in revenues by virtue of the higher rate scale on the excepted commodities and there will be a diversion of traffic to other modes of transportation. The record does not show a justification for the interference with and usurpation of the jurisdiction of the Louisiana Public Service Commission to regulate and determine Louisiana intrastate freight rates.

Appellant reiterates and reaffirms the allegations and statements in its jurisdictional statement and requests that this amendment to its jurisdictional statement be filed and considered, and in due course the judgment of

the lower court be reversed and judgment entered for plaintiff and intervening plaintiffs as prayed for.

Respectfully submitted,

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PAUL G. BORRON, JR.,
For American Sugar Cane League of the U.S.A., Inc., Intervening Plaintiff;
LOUIS A. SCHWARTZ,
For New Orleans Traffic and Transportation Bureau and American Turpentine and Tar Company, Intervening Plaintiffs and American Sugar Cane League of the U.S.A., Inc., Intervening Plaintiff.

By: .....
ROBERT A. AINSWORTH, JR.,
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Attorney.

CERTIFICATE OF SERVICE.

I hereby certify that a copy hereof has been duly served on all parties of record in the manner and form required by the rules of this court.

Robert A. Ainsworth, Jr.